HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.19765 OF 1999

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Between:

K. Siva Reddy & others ....Petitioners

AND

The A.P. Transmission Co. Ltd.,
Rep. by its Managing Director,
Hyderabad & another. .....Respondents

:: O R D E R ::

Counsel for the petitioners : Shri G. Praveen Kumar

Counsel for the respondents : Shri Samineni Kishore

24th January 2007

In this petition, the petitioners have prayed for quashing communications dated 02.06.1998 vide which Superintending Engineer, Operation Circle, Ananthapur (respondent No.2 herein) rejected their candidature for the post of Junior Lineman on the ground that they do not possess the prescribed qualifications. They have further prayed for issue of mandamus to the respondents to reconsider their cases for appointment as Junior Lineman.

Petitioner Nos.1 and 2 are 9th Class pass and petitioner No.3 is 10th Class pass. They are said to have worked as contract labour with the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board') for different periods ranging from 12 to 8 years. They filed Writ Petition No.13780 of 1997 for issue of a mandamus to the respondents to consider their cases for appointment in accordance with the policy contained in B.P.Ms.No.36, dated 18.05.1997 issued by the Board. The same was disposed of by the learned Single Judge on 02.07.1997 with the direction that the candidature of the petitioners be considered in accordance with the policy framed by the Board. Thereafter, respondent No.2 interviewed the petitioners, but rejected their candidature on the ground that they do not possess the prescribed qualifications.

The petitioners have questioned the rejection of their candidature primarily on the ground of arbitrariness and discrimination. In the affidavit filed by him, petitioner No.1 – K. Siva Reddy has averred that all the petitioners have completed more than 240 days of service and they have worked under the Board in different capacities, but without any rhyme or reason, respondent No.2 declared them ineligible to be appointed as Lineman.

In the counter filed by Shri B.S. Ramachandra Rao, Assistant Secretary (Legal), Andhra Pradesh State Electricity Board, it has been averred that the petitioners do not fulfill the qualifications prescribed by the Board vide B.P.Ms.No.1048, dated 23-9-1989 and, therefore, they were not considered eligible for appointment as Junior Lineman.

I have heard learned counsel for the parties. There is no dispute between the parties that the

persons possessing the requisite qualification could only be considered for appointment in terms of the policy contained in B.P.Ms.No.36, dated 18.05.1997. This is evinced from paragraph 5 (a) and (b) of B.P.Ms.No.36, which are extracted below:

> "5. The guidelines for selection of the candidates from the above categories shall be as follows:
> a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age.
> b) Educational Qualifications:- Educational qualifications shall be as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications, which are prescribed in the service regulations for such appointment."

Although the service regulations framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948 do not specify the qualifications for the post of Lineman, the same will be deemed to have been prescribed vide B.P.Ms.No.1048, dated 23-9-1989 read with Memo No.DP/DM-1/A2/762/94-1, dated 23.10.1994. For the sake of reference, the relevant portions of B.P.Ms.No.1048, dated 23.09.1989 and Memo dated 23.10.1994 are reproduced below:

> **"B.P.Ms.No. 1048:**
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> **Proceedings:**
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> As per the existing O.S.S. Non-Statutory Rules the following are the qualifications prescribed for the post of Helper.
> i) Ability to read and write.
> ii) One year practical experience either in O&M/Construction works.
>
> The above qualifications were prescribed in the year 1958 and continued as such till todate. But the time of prescribing the above qualifications there were no qualified candidates. But, in view of the above circumstances, several persons with academic qualifications and technical qualifications are available now. It is therefore considered desirable to prescribe higher qualifications for direct recruitment of Helpers.
>
> The A.P. State Electricity Board after careful consideration prescribes the following qualifications for the post of Helpers.
>
> i) A pass in SSLC/SSC/10th class;
> ii) A pass in ITI preferably with Electrician Trade or
> iii)Vocational course in Electrical trade.
>
> These orders will come into effect from the date of issue."
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> **Memo No.DP/DM-1/A2/762/94-1:**
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> The issue regarding redesignation of Helper is under consideration of the Board since long back.
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> 2. After careful consideration the APSE Board directs that posts of 'Helper' in O&M/Construction establishment shall be redesignated as indicated below:
> i) 'Junior Lineman' – in Operation circles/TLC/Construction circles etc;
> ii) 'Junior Plant Attendent' – in Generating Stations/Projects.
>
> 3. However there shall be no change in functions and duties, service conditions etc; and these orders are only mere redesignation of the posts.
>
> 4. These orders shall come into force with immediate effect."

The petitioners have not challenged the vires of B.P.Ms.No.1048, dated 23-9-1989 or Memo dated 23-10-1994. Therefore, their eligibility to be appointed as Junior Lineman will have to be determined with reference to the above reproduced qualifications.

As per their own admission, petitioner Nos.1 and 2 are 9th Class pass and petitioner No.3 is 10th Class pass. Neither of them has passed I.T.I. or Vocational course in Electrical Trade. It is, thus, evident that petitioner Nos.1 and 2 do not possess the prescribed academic qualification i.e. SSLC/SSC/10th Class pass as also technical qualification i.e. I.T.I. or Vocational course in Electrical Trade and petitioner No.3 does not possess the technical qualification. Therefore, the rejection of their candidature cannot be termed as illegal or arbitrary and a writ in the nature of mandamus cannot be issued to the respondents to appoint them as Junior Lineman.

At the cost of repetition, I consider it proper to reiterate that the policy contained in B.P.Ms.No.36, dated 18.05.1997 envisages consideration of the candidature of only those who fulfill the prescribed qualifications, and, as none of the petitioners possesses the qualifications prescribed by the Board, the refusal of respondent No.2 to entertain their candidature for appointment as Junior Lineman cannot be termed as illegal.

In **State of M.P. v. Shyama Pardhi**[1], the Supreme Court considered the question whether termination of the service of an employee who does not possess the qualifications prescribed for appointment as Auxiliary Nurse-cum-Midwife can be declared illegal on the ground of violation of the rules of natural justice and answered the same in negative by making the following observations:

> "It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise....."

In **Pabitra Mohan Dash v. State of Orissa**[2], the Supreme Court held that the appellant who did not have seven years teaching experience essential for appointment as Head Master does not have any right to continue on the post despite the fact that his appointment was approved by the competent authority. Some of the observations made in that judgment, which have bearing on the case in hand, are extracted below:

> "Admittedly, with effect from 29-5-1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a Trained Graduate and must have 7 years of teaching experience as a Trained Graduate Teacher. If subsequent to 29-5-1977 any appointment has been made to the post of Headmaster contrary to the aforesaid provisions of the regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression "approval" used in the second direction in *Golakh Chandra Mohanty case* {(1993) 76 Cut LT 308} is referable to the approval contemplated under Rule 8(2)(*b*) of the Recruitment Rules and, therefore, if there has been an approval by the Director then in such a case the appointment made after the prior approval would not be invalidated. The conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by the Supreme Court. Moreover, a person who has been appointed as Headmaster-*in-charge* cannot claim any right on the basis of that appointment even if the same might have been approved by any competent educational authority. The in-charge Headmaster is not the same as the Headmaster of the school and it merely entitles a person to remain in charge and discharge the duties of a Headmaster."

In **A.Umarani v. Registrar, Coop.Societies**[3], the Supreme Court held that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal and such illegality cannot be cured by taking recourse to regularisation. The Supreme Court further held that regularisation is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act and the rules framed thereunder.

In **Mohd. Sartaj v. State of U.P.**[4], the Supreme Court held that the appellants who did not possess the requisite training qualification for appointment as Assistant Teacher cannot seek a direction for being allowed to continue in service.

By applying the ratio of the above noted judgments to the facts of this case, I hold that rejection of the petitioners' candidature does not suffer from any legal infirmity warranting intervention by this Court under Article 226 of the Constitution of India.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.24784 of 1999 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

24th January, 2007.

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[1] (1996) 7 SCC 118
[2] (2001) 2 SCC 480
[3] (2004) 7 SCC 112
[4] (2006) 2 SCC 315